

Mississippi Department of Employment Security
APPEALS DEPARTMENT
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Overview

Appeal procedures are designed to carry out the Unemployment Insurance statutes and regulations. The statutes and the regulations of both the Unemployment Insurance Division and the Appeals Department are available at all Claims Center Offices and the Appeals Department.

Q. WHO CAN FILE AN APPEAL, AND WHAT ARE THE STEPS INVOLVED?

A. A claimant or an employer affected by a decision of the Mississippi Department of Employment Security (MDES) can appeal the denial of benefits or the award of benefits. The losing party can appeal the initial decision, or an amended decision, to an Appeals Referee. The Referee's decision can be appealed to the Board of Review, and the decision of the Board of Review can be appealed to the Circuit Court. The time periods in which to appeal are stated in the decision.

Q. WHAT CAN BE APPEALED?

A. A decision which may affect a claimant's eligibility and payment of benefits or the charges to the employer's account are appeal-able, and the right to and method of appeal will be stated on the decision subject to appeal.

Q. IF THE EMPLOYER IS NOT A BASE PERIOD EMPLOYER (AND THUS IS NOT PRESENTLY CHARGED), CAN HE STILL PURSUE AN APPEAL?

A. Yes. Although the wages paid the claimant may be too recent for the claimant's current base period, they can be used for a future benefit year, which means some potential liability to the employer.

Q. WHAT IF A CLAIMANT HAS RETURNED TO WORK?

A. The appeal will still determine the claimant's entitlement to benefits (and the employer's chargeability) during the time when the claimant was unemployed and filed claims for benefits. Moreover, if the claimant is not fully employed, he or she may be eligible for partial benefits. Potential liability remains in effect if the claimant collects partial benefits.

Q. WILL AN APPEAL AFFECT THE PAYMENT OF BENEFITS?

A. If a decision by MDOES or if the Referee awards benefits, the claimant will receive payments even though a further appeal is pending. If a decision determines that the claimant is ineligible, benefits will cease unless and until that decision is overturned on appeal. If the final decision is not in the claimant's favor, the claimant may have to pay back the benefits received.

Q. SHOULD A CLAIMANT CONTINUE FILING CLAIMS?

A. Yes, as long as he is unemployed and available for work. If a decision is made in his favor, he will receive compensation only for those weeks he filed claims.

Q. WHAT IF THE CLAIMANT IS NOT CLAIMING BENEFITS AGAINST A CERTAIN EMPLOYER OR THEIR ACCOUNT?

A. Neither the employer nor the claimant has a choice about which employer is charged for a claim. This is determined by law. A separation from any employment within the applicable period may affect eligibility for benefits or the unemployment tax rate of that employer.

Q. WHY CAN A FORMER EMPLOYER APPEAL IF A CLAIM IS APPROVED?

A. Because the Unemployment Insurance program is paid for by a tax on employers, unemployment claims affect the amount the employer must pay into the Unemployment Insurance Fund. Employees pay nothing into the fund. Both parties to a case have a right to appeal.

Q. HOW WILL I KNOW THE DATE, TIME, AND PLACE OF THE HEARING?

A. The Notice of Hearing shows you and the other party the time, date, place, and the issues to be covered. Some hearings are conducted by a method of telephone conferencing with all parties connected.

Q. WHAT SHOULD I DO IF I CANNOT ATTEND THE HEARING?

A. Postponements are granted only for compelling reasons. To request a postponement, notify the Referee or the Appeals Department **immediately**. The telephone number is printed on the Notice of Hearing. It is important that postponement requests be made well in advance of the date of the hearing.

Q. WHAT IF AN EMPLOYEE AGREES TO GIVE UP THE RIGHT TO BENEFITS?

A. The law prohibits an employer from asking employees to give up their benefits. If an employee made such an agreement, it is void and the employee is not bound by it. An employer may not interfere with an employee's claim for benefits or appeal.

Q. CAN AN APPEAL BE WITHDRAWN?

A. Yes. A claimant or employer who files an appeal may withdraw in writing it at any time before the Referee's decision is issued. You should withdraw your appeal only if you decide that the Commission's initial decision is correct.

Q. SHOULD AN APPEAL BE WITHDRAWN IF CLAIMANT IS BACK AT WORK?

A. No. If he is back at work, he may still be entitled to benefits for the period of unemployment. Hearings are held during normal business hours. However, an effort will be made to schedule a hearing that will minimize the amount of time away from the job.

Q. WHAT IF I GET ANOTHER UNFAVORABLE DECISION FROM MDOES FOR A DIFFERENT REASON OR PERIOD OF TIME?

A. You must file another appeal unless the new decision specifically tells you not to. Your first appeal covers only the claims involved in the original decision. If you are in doubt, file the appeal. Failure to file an appeal within the time specified in the decision will allow the decision to become final and binding on you.

Q. WHAT HAPPENS IF ONE OF THE PARTIES DOESN'T ATTEND THE HEARING?

A. If a certain party does not show up for a hearing, the decision may be based on testimony given by the other party or the record previously made. **If a claim was allowed and the claimant has already received benefits and the Referee reverses the decision, the claimant will have to repay all the unemployment insurance benefits received.** It is very important that all parties attend the hearing.

Q. HOW CAN THE CLAIMANT COLLECT BENEFITS IF HE OR SHE WAS SUCH AN UNSATISFACTORY WORKER?

A. An employee's eligibility and employer's chargeability are determined solely by the Unemployment Insurance Act. The employer may have been entirely justified in discharging an employee, but the claimant will not be disqualified from collecting benefits unless disqualifying conduct under the Act is proved.

Q. DO I NEED A LAWYER?

A. Legal representation is not required; however, the Unemployment Insurance regulations provide that you may have a lawyer or other representative of your choice. If you have a representative, you are responsible for paying your representative. Fees charged claimants for representation must be approved by the Appeals Referee. Your local legal service office may provide a representative without charge. If you wait or delay getting a representative, you may find it difficult finding someone available for your hearing that is scheduled. If you retain a lawyer or representative, notify the Appeals Department of the name and address of your representative. You should arrange for a representative or attorney before the hearing. You will not be given a new hearing just because you later decide you want a representative.

Q. HOW SHOULD I PREPARE FOR THE HEARING?

A. Start immediately to gather any papers that relate to the issue such as correspondence, union contracts, warning notices or medical statements. Contact anyone you might need as a witness. If you plan to hire a lawyer or other representative, do so as soon as possible so that person will have time to prepare. If you wish to review the case file or get a copy of it, you should do so before the hearing. The file contains statements made by claimants and any employer(s) involved in the Claims Examiner's determination, the appeal, and other documents submitted by any party to the appeal. This information may help you prepare for the hearing.

IT IS YOUR RESPONSIBILITY TO PRESENT EVIDENCE AND TESTIMONY TO PROVE YOUR CASE.

The Referee will not investigate or find witnesses for you. He or she will act on the basis of information in the file and evidence and testimony presented at the hearing. The Referee will not be able to consider evidence provided after the hearing. Make sure that any witnesses who have direct knowledge of the events in question are available to attend the hearing.

The hearing scheduled before the Referee is the only chance that you may have to tell your story. Be prepared to tell the Referee everything important and to present all witnesses and pertinent evidence at the hearing. You will not be allowed another hearing to present evidence which you failed to offer the first time unless you had good cause for your failure.

Q. CAN I APPEAL THE AGENCIES' DETERMINATION ABOUT REPAYMENT?

A. Yes. This is considered a separate issue. Only the amount of overpayment and the obligation to make repayment will be considered.

Q. WHAT IF I MOVE?

A. Notify both the Appeals Department and your local Claims Center office. If you move out of state, arrangements can be made for a telephone hearing.

Q. WHAT IF I HAVE A SPEECH, HEARING, OR LANGUAGE PROBLEM?

A. Notify the Appeals Department if you need an interpreter.

Q. HOW WILL THE HEARING BE CONDUCTED?

A. Hearings are informal. The Referee will explain the procedures prior to opening the hearing. You will be allowed to testify, enter evidence, ask questions of all witnesses, and make a closing statement. All parties and witnesses are required to swear or affirm the truth of what is said.

Q. ARE THE RULES OF THE HEARING THE SAME AS IN COURT?

A. No. The rules of evidence are relaxed. The law allows the Referee to question the parties and review written or printed records to ensure justice for all interested parties.

Hearsay testimony, that is, repetition of statements made by persons who are not present at the event, **may** be accepted. However, direct testimony is considered better evidence. If the claimant offers direct testimony on an issue and the employer only hearsay evidence, the Referee will probably give greater weight to the testimony of the claimant.

Whenever possible, have at the hearing the person or persons who witnessed the events in question or who have first-hand knowledge. This means that the testimony of the foreman or supervisor is usually more valuable than that of a personnel director.

Q. HOW CAN I PROVE MY CASE?

A. Present the best possible evidence, including a description of events and circumstances by the individual primarily involved, any documents concerning the issue, and testimony from witnesses who observed or who have knowledge of what happened. If the claimant's separation was the result of an incident involving a supervisor or a co-worker, the testimony of the personnel director will usually not be sufficient.

If the employer discharged the claimant, it must be proven that job related misconduct existed.

"The meaning of the term 'misconduct', as used in the unemployment compensation statute, is conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect from his employees. Also, carelessness and negligence of such degree, or recurrence there of, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered 'misconduct' within the meaning of the statute."

An employee shall not be found guilty of misconduct for the violation of a rule unless: (1) the employee knew or should have known of the rule; (2) the rule was lawful and reasonably related to the job environment and job performance; and (3) the rule is fairly and consistently enforced.

The best evidence possible should be presented, including a description of events and circumstances, any documents concerning the issue, and any witnesses who observed or were directly involved in what happened. Remember that first-hand direct knowledge is better than hearsay.

If a claimant left work voluntarily, it is his responsibility to prove that he left for sufficient cause connected with the job or some other reason permitted by the statute.

FOR EXAMPLE: A claimant may need to show his reason for leaving the job was due to some risk to his safety, health or morals. Also, if his medical condition is an issue in the case (for example, if you quit because the job was affecting your health or you were fired because you were out sick), you should have

your doctor prepare and sign as detailed a report as possible. You should ask the doctor to include the following information if applicable and relevant:

- ◆ Your medical history as it relates to your separation and the dates on which you consulted the doctor;
- ◆ The condition(s) for which you were treated;
- ◆ The conditions on the job as your doctor understood them and how those conditions affected your health;
- ◆ Any restrictions on employment caused by your condition; and,
- ◆ Whether or not your doctor actually advised you to leave or quit the job and the medical basis or reason.

Q. HOW WILL I KNOW WHAT TO TELL THE REFEREE?

A. The Referee will ask questions designed to obtain the necessary information. Listen carefully to the questions and answer as directly and plainly as you can. Give complete and accurate information, but do not ramble or bring in unrelated information. The Referee determines what is or is not relevant, or what needs to be heard.

Q. WHAT IF I FAIL TO BRING SOMETHING OR NEED TO OBTAIN MORE EVIDENCE?

A. You should ask the Referee to continue the hearing so that you can get whatever is needed. The Referee may grant your request if he or she determines that the information is relevant and you have good cause for not having it with you. The Referee will consider only information, evidence, and testimony properly presented during the hearing.

Q. WHAT IF I NEED TO SUBPOENA A WITNESS?

A. Advise the Referee when you get to the hearing. The Referee will determine whether a subpoena will be necessary and, if so, arrange for it to be served. A physical (street) address is required.

Q. WHEN SHOULD I ARRIVE FOR THE HEARING?

A. You are expected to arrive at least ten minutes before the hearing time.

Q. MAY I SEND INFORMATION TO THE REFEREE BEFORE THE HEARING?

A. Yes. If you are scheduled for a telephone hearing, you should send the Referee **and the other party** a copy of the documents to be used at the hearing. Bring your documents with you if you are having an in-person hearing.

Q. MAY I SPEAK TO THE REFEREE BEFORE THE HEARING?

A. The Referee generally will have no contact with either party outside of the hearing. Other members of the Appeals Department will advise you on procedural matters or issues.

Q. WHAT DOES IT MEAN IF THE HEARING NOTICE ISSUE IS CHARGEABILITY?

A. If the claimant returned to work after being separated from your employ and earned eight times his or her weekly benefit rate before filing a claim for benefits, the claimant cannot be disqualified on the separation issue regardless of the reason for the separation. Nothing that happens at the Referee's hearing will affect the claimant's benefits if the Notice of Hearing shows chargeability as the issue. The sole purpose of the hearing will be to determine whether charges should be assessed against an employer's account, which also affects the company's tax rate.

Q. WHAT RECORD IS MADE OF THE HEARING?

A. The hearing will be recorded on a cassette tape, which is the official record of the proceeding. Make every effort to speak clearly enough to be heard and understood. Do not interrupt when others are speaking. Do not attempt to speak to the Referee "off the record". The Referee is required to record the entire proceeding. There will be no other recordings allowed.

Q. WHAT WILL THE REFEREE'S DECISION BE BASED ON?

A. Only information entered into the record at the hearing is used to decide the case. It is your responsibility to present this information. The Referee will not investigate or search for witnesses. The statutes, regulations, and decisions of the Board of Review and the courts guide the Referee in deciding the issues.

Q. HOW WILL I BE INFORMED OF THE DECISION?

A. The Referee will mail a written decision to you, your representative, and other interested parties and their agents, as soon as possible. The decision will explain your right of appeal.

Q. WHAT CAN I DO IF THE DECISION IS NOT IN MY FAVOR?

A. If you disagree, you can appeal to the Employment Security Board of Review.

Q. HOW DO I FILE AN APPEAL FROM THE REFEREE'S DECISION?

A. The Referee's decision explains how to appeal. Your appeal must be mailed (postmarked by the United States Postal Service) or received within fourteen (14) days of the mailing date of the decision.

Q. IF I APPEAL TO THE BOARD OF REVIEW, WILL I HAVE ANOTHER HEARING?

A. Probably not, this is why you should say everything that is important at the Referee's hearing. Give specific facts. Failure to do so at the Referee's hearing may prevent consideration at higher levels.

Q. HOW WILL THE BOARD OF REVIEW HANDLE THE APPEAL?

A. The Board of Review will review all the material in the case file and review the recording of the Referee's hearing. A decision will be issued affirming (agreeing with), reversing, or modifying the Referee's decision. If the Board feels that further information is needed, the case may be remanded (sent back) to the Referee for a hearing. If you are not satisfied with the Board's decision, you may file a further appeal to the Circuit Court.

Q. CAN ANYONE ELSE APPEAL?

A. Yes. The parties or the Unemployment Insurance Division also have the right to appeal decisions of the Referee or the Board of Review if they are adversely affected by the decisions.

Q. WHERE CAN I GET MORE INFORMATION?

A. From the Appeals Department, local Claims Center Office, in person, by mail, or by phone between 8:00 A.M. and 5:00 P.M., Monday through Friday. Every effort will be made to answer your questions and to take appropriate action on your appeal.

Q. IS FINANCIAL NEED A FACTOR IN THE DECISION?

A. No. The Unemployment Compensation Act is an insurance program designed to pay benefits to people who are unemployed through no fault of their own and who are actively seeking work. It is not sick pay or the same as public assistance benefits.